



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS  
JOHN CORNYN

August 20, 2002

Mr. Tim Molina  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2002-4580

Dear Mr. Molina:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167389.

The Office of the Attorney General (the "OAG") received a request for four categories of information pertaining to investigations of and complaints against Grandview Nursing Home and all information regarding a named individual. You inform us that the Medicaid Fraud Control Unit of the OAG ("MFCU") holds information that is responsive to category 2 of the request, but that the MFCU does not have any information that is responsive to the majority of the request. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). You seek to withhold the responsive information under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects from public disclosure information that is made confidential by law. You contend that the requested information is made confidential by section 242.127 of the Health and Safety Code. That section provides that "[a] report,

record, or other working paper used or developed in an investigation under [subchapter E, chapter 242] is confidential and may be disclosed only for purposes consistent with rules adopted by the Texas Board of Human Services or the "designated agency." *See* Health & Safety Code § 242.126 (investigation of complaint of abuse or neglect by Department of Human Services or designated agency).

This office has previously determined that the confidentiality provision in section 242.127 extends to MFCU's reports, records, or working papers used or developed in an investigation under subchapter E. You state that the documents submitted to this office for review consist of reports, records, or working papers used or developed in an investigation under subchapter E. We therefore agree that the submitted information is subject to section 242.127. Because you have not advised of any rules permitting disclosure of the information at issue, we conclude that the submitted information is made confidential under section 242.127 and therefore must be withheld in its entirety pursuant to section 552.101 of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

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<sup>1</sup>Because we resolve your request under section 242.127 of the Health and Safety Code, we need not address the applicability of the other exceptions you raised.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 167389

Enc. Submitted documents

c: Mr. J. Greg Coontz  
217 Market Street  
Burleson, Texas 76028  
(w/o enclosures)